

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ISSUES RAISED IN THE INITIAL FILING)	
OF KENTUCKY CHRISTIAN COLLEGE)	
TO PROVIDE COMPETITIVE LOCAL)	CASE NO. 98-317
EXCHANGE TELECOMMUNICATIONS)	
SERVICES)	

O R D E R

INTRODUCTION

Kentucky Christian College ("Kentucky Christian"), incorporated in Kentucky as a non-profit, religious educational institution, has filed with the Commission an application to become a local exchange telecommunications carrier, a tariff, and several requests for deviations from certain regulatory requirements.¹ Pursuant to Administrative Case No. 370,² a person wishing to provide competitive local exchange service is no longer required to file an application for Commission approval prior to commencing operations. He must, however, file a tariff, with 30 days' notice to the Commission, together with certain other pertinent information. Commission action on an initial filing of this nature ordinarily is not required. Nevertheless, the filing of Kentucky Christian raises a number of issues requiring disposition by the Commission. Those issues will be treated in this Order.

¹ Kentucky Christian's "Verified Application for Certificate of Public Convenience and Necessity to Provide Local Telecommunication Services in the Commonwealth of Kentucky" is appended hereto as Appendix 1.

² Administrative Case No. 370, Exemptions for Providers of Local Exchange Service Other than Incumbent Local Exchange Carriers, Final Order dated January 8, 1998.

Provision of Unauthorized Service

Pursuant to KRS 278.160, no utility may provide service unless it has on "file with the Commission . . . schedules showing all rates and conditions for service established by it and collected or enforced." The statute further provides that "[n]o utility shall charge, demand, collect, or receive from any person a greater or less compensation for any service rendered. . . than that prescribed in its filed schedules." Id. Accordingly, Administrative Case No. 370 requires any carrier filing its initial tariff with the Commission to state in writing whether it has previously collected compensation for providing intrastate telecommunications service in Kentucky. Kentucky Christian, in its application, admits that it has. However, in its initial filing it asked that it not be required to refund or credit to customer accounts the amounts so collected, estimated in the initial application at \$173,000 in 1997 alone.³ Kentucky Christian cites hardship, as well as its non-profit, educational mission as grounds for its request. None of the grounds cited by Kentucky Christian, however, appear anywhere in law as exceptions to KRS 278.160, which requires public utilities to "adhere rigidly to rate schedules approved by the public service commission." Boone County Sand & Gravel Co. v. Owen County Rural Electric Coop. Corp., Ky.App., 779 S.W.2d 224, 225 (1989). Under Kentucky law, Kentucky Christian simply is not legally entitled to the monies it collected for service before filing its tariff.

³ A subsequent filing, see Appendix II hereto, indicates that the 1997 refundable amount is actually \$3,744. Kentucky Christian explains, in documents attached hereto, that the discrepancy is due to its having erroneously included amounts collected from provision of shared tenant services, which traditionally have not been regulated by the Commission and for which no tariff need be filed.

Subsequently, on June 2, 1997, Kentucky Christian filed a written offer to send each of its customers a letter informing them of their right to a refund of all improperly collected monies. Kentucky Christian also has filed a statement that includes the names of its nine utility customers and the monthly amounts paid by those customers, together with a letter explaining the limited nature of Kentucky Christian's records. Kentucky Christian proposes to send its customers a letter that explains, among other things, that KRS 278.160 requires a utility to have an approved tariff and that, because it lacked such a tariff, it has an obligation to refund the amounts paid for utility service.⁴

Under the circumstances, the Commission finds that Kentucky citizens' right to be served by utilities which operate pursuant to legally-mandated regulatory oversight is properly preserved by the method proposed by Kentucky Christian. Kentucky Christian properly proposes to inform its few customers of their rights and of Kentucky Christian's obligation. If a Kentucky Christian customer wishes to permit Kentucky Christian to retain the amounts it improperly collected, his action is tantamount to a donation to a non-profit, religious educational institution. Donations of this nature are commonplace, and the citizens in question may make such donations should they choose to do so. Accordingly, Kentucky Christian's proposed solution should be accepted and, within ten days of the date of this Order, each affected customer should receive a letter [1] explaining that Kentucky Christian failed to file its tariff prior to providing service as required by KRS 278.160; [2]

⁴ The documents included in Kentucky Christian's June 2 filing include a letter dated June 1, 1998, from John Hughes, Attorney for Kentucky Christian, to Executive Director Helen Helton; a letter dated May 28, 1998 from Jeffrey Wente, Kentucky Christian Director of Campus Development; and a statement of Kentucky Christian's refundable accounts. These documents are attached hereto as Appendix II.

informing the customer of his right to a refund or to a credit on his account; and [3] stating the name, address, and telephone number of the person to whom the request for a refund or credit should be directed.

Requests for Deviations from Regulatory Requirements

Kentucky Christian also moves the Commission to grant it deviations from 807 KAR 5:006, Section 3(5) (concerning use of the Uniform System of Accounts); 807 KAR 5:061, Section 5 (concerning provision of directories); and 807 KAR 5:061, Section 11 (concerning mandatory provision of a public, coin-activated telephone). In support of its requests, Kentucky Christian contends the requirements are burdensome and unnecessary, given the limited nature of the services it provides. Kentucky Christian also states it will enter into contracts with incumbents to fulfill directory requirements. The Commission finds that, as it does not serve the public interest to impose the requirements at issue on a competing local exchange carrier, the deviations requested are reasonable and should be granted.

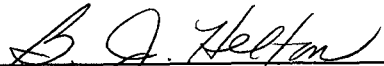
CONCLUSIONS

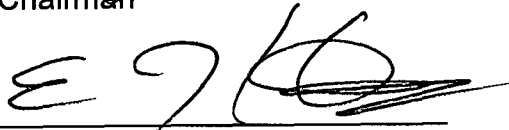
The Commission having been sufficiently advised, IT IS HEREBY ORDERED that:

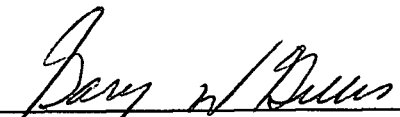
1. Kentucky Christian shall notify each of its customers of his right to a refund or credit to his account, as described herein, within ten days of the date of this Order.
2. Kentucky Christian's motion to deviate from the regulatory requirements of 807 KAR 5:006, Section 3(5), 807 KAR 5:061, Section 5, and 807 KAR 5:061, Section 11, as specified herein, is granted.

Done at Frankfort, Kentucky, this 24th day of June, 1998.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director

APPENDIX I

AN APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 98-317 DATED JUNE 24, 1998

TS9-287

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY CHRISTIAN COLLEGE
FOR A CERTIFICATE OF PUBLIC CONVENIENCE
AND NECESSITY TO RESELL LOCAL
TELECOMMUNICATION SERVICES
IN THE COMMONWEALTH OF KENTUCKY

)
)
) Case No. 98- 317
)
)

**VERIFIED APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND
NECESSITY TO PROVIDE LOCAL TELECOMMUNICATION SERVICES IN THE
COMMONWEALTH OF KENTUCKY**

Kentucky Christian College ("Applicant"), through counsel, petitions the PSC for the issuance of a Certificate of Public Convenience and Necessity, authorizing Applicant to resell on a limited, contract basis, local exchange telecommunication services as a competitive local carrier and long distance telecommunications services within the State of Kentucky. In support of its Application, Applicant provides the following information:

A. NAME AND ADDRESS OF APPLICANT

The name of the Applicant is:

Kentucky Christian College
100 Academic Parkway
Grayson, Ky. 41143

Correspondence concerning this Application should be addressed to the Applicant's counsel:

John N. Hughes
124 West Todd Street
Frankfort, KY 40601
(502) 227-7270

William D. Kirkland
McBrayer, McGinnis, Leslie & Kirkland
300 State National Bank Bldg.
Frankfort, KY 40601
(502) 223-1200

and to its Director of Campus Development, who is also responsible for matters related to complaints about service and other regulatory matters.:

Mr. Jeffrey Wentz
100 Academic Parkway
Grayson, KY. 41143

B. CERTIFICATE OF INCORPORATION

Applicant was incorporated in the State of Kentucky as a non-profit, Christian educational institution in 1919. A copy of the Applicant's Articles of Incorporation and Amendments are attached as Exhibit 1. Its tax exempt notice from the Internal Revenue Service is attached as Exhibit 2.

C. DESCRIPTION OF UTILITY AND SERVICE IT PROPOSES TO PROVIDE

Applicant is a Christian oriented institution of higher education. It currently has telecommunications switching equipment (PBX), which is used to provide on campus telecommunications services. That equipment has sufficient additional capacity to allow the Applicant to offer to resell local and long distance telecommunications services to certain segments of the public. A summary of the Technical specifications of the equipment is attached as Exhibit 3.

The Applicant proposes to serve only a limited number of residential customers. Those customers will be confined to students, faculty, staff, administrators and professional service providers to the school, such as its attorney, accountant, etc. Additionally, the Applicant proposes to offer service to any business located within the corporate city limits of Grayson. It will not provide operator assisted traffic aggregation.

The purpose of providing service is to utilize the present equipment to its fullest extent and to provide the school with a source of revenue to fund campus technological improvements.

The Applicant is negotiating an Interconnection Agreement with GTE, Inc. allowing the Applicant to resell local exchange services in GTE's service area in Kentucky. A copy of this agreement will be filed when executed.

D. TECHNICAL QUALIFICATIONS

Applicant has sufficient technical capabilities to fulfill the needs of its customers. Employees of the Applicant are experienced in the technical requirements of establishing residential dial tone as well as PBX installations. Employees of the Applicant have also received training in residential installations and problem solving and are in compliance with USOC specifications on terminations. The technical ability of the Applicant is reinforced by the underlying local exchange carrier, GTE, as the Applicant operates primarily as a reseller of GTE's local exchange service. Documentation of the technical training and experience of the Staff is attached as Exhibit 4.

E. FINANCIAL QUALIFICATIONS

Any initial working capital needs will be supplied by Applicant. A financial statement for the period concluding May 31, 1997 is attached as Exhibit 5.

F. INITIAL TARIFF

Pursuant to Orders of the Commission, the Applicant has prepared a Description of Services and Prices, (Tariff) to be effective May 1, 1998, which is attached as Exhibit 6.

G. DESCRIPTION OF TRANSMISSION FACILITIES

The Applicant will be a facilities based provider of services. The Applicant owns and operates PBX (see Exhibit 3) facilities, which will be used by the Applicant in providing basic local exchange service in the State of Kentucky.

H. INITIAL AREA OF SERVICE

Applicant hereby requests authority to provide service in Carter County and the City of Grayson of the State of Kentucky currently served by GTE.

I. BILLINGS AND COLLECTIONS

Applicant provides its own billing system that itemizes each call and the charges, taxes and other necessary information. A sample bill is attached as Exhibit 7.

J. DEVIATIONS FROM REGULATIONS

Compliance with the following Rules would require Applicant to provide service contrary to the nature of Applicant's business. For these reasons, pursuant to 807 KAR 5:061(28), Applicant has presented good cause and justification for a deviation from the following Regulations:

Applicant therefore seeks deviation of the following provisions:

a. 807 KAR 5:006, Section 3(5) - Record and Report Retention.

Applicant requests that the Commission waive the requirement that it follow the Uniform Systems of Accounts ("USOA"), 807 KAR 5:006, SECTION 3(5). Applicant currently maintains its books and records in accordance with Generally Accepted Accounting Principles ("GAAP"). Such a requirement would be extremely burdensome. Because GAAP accurately reflects the Applicant's

operations, it is an alternative procedure that will be consistent with the principles embodied in the USOA provisions. Applicant will maintain an accounting system in accordance with GAAP that will permit the Commission to monitor its operations and that will permit it to comply with any applicable Commission requirements.

b. 807 KAR 5:061, Section 5 - Directories. Applicant seeks a waiver of this section requiring the provision of annual directories. Applicant will enter into a contractual agreement with incumbent providers to fulfill all directory requirements.

c. 807 KAR 5:061, Section 11 - Public Telephone Service. Applicant seeks a waiver of this section requiring that Applicant supply at least one public coin-activated telephone in each exchange. This requirement would be overly burdensome since Applicant is providing only limited resold local and long distance services.

d. 807 KAR 5:061, Section 28 - Deviations Applicant requests a deviation from any other regulation inconsistent with the limited services proposed to be offered.

K. PRIOR SERVICE REVENUES Applicant also requests a waiver of the Commission's policy requiring refunds or credits of rates paid by customers prior to this application. For a number of years, the Applicant has provided local and long distance telecommunications services to its students and a limited number of faculty, staff and local supporters. Revenue from these services amounted to approximately \$173,000 in 1997.

The receipts from this activity were used solely for the enhancement of campus facilities and to supplement the school's non-profit educational activities.

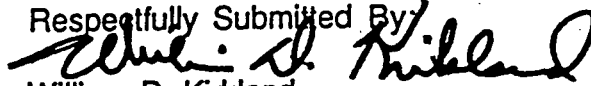
Refunding the money collected would be a severe hardship on the school. The customers were all aware of the effort of the school to raise money and are all generally strong supporters of the school. To conform to what the school now knows to be the legal requirements of the Commission, it is submitting this application to allow it to continue to provide service to those limited residential customers that have historically worked with the school to make it a success. It also seeks to expand service to local businesses as a means of generating additional revenue.

In light of the unusual circumstances of this case, the non-profit Christian educational mission of the school and the severe financial hardship refunding or crediting past receipts would have, it is requested that the requirement of refunding or crediting previously collected revenue from local and long distance telecommunications services be waived.

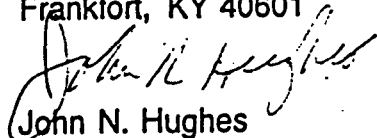
The Commission in the case of "Investigation Into Alleged Unauthorized Rates and Services of Americall Systems of Louisville, Inc." Case No. 90-026, found that it had been providing untariffed telecommunications services. However, the Commission did not require that rates previously collected be refunded or credited to future service. See Order of February 28, 1992. Applicant asserts that there is sufficient legal basis as evidenced by the Americall Order as well as public policy reasons not to penalize a non-profit educational institution.

For the above stated reasons, the Applicant requests that the Commission grant a Certificate of Public Convenience and Necessity to the Applicant to resell local exchange and long distance telecommunications services as set forth in the proposed Tariffs; and grant a deviation from the Regulations listed in this Application as well as any others in conflict with its business purposes; and all other appropriate relief.

Respectfully Submitted By



William D. Kirkland
McBrayer, McGinnis, Leslie & Kirkland
300 State National Bank Bldg.
Frankfort, KY 40601



John N. Hughes
124 West Todd Street
Frankfort, KY 40601
(502) 227-7270

Attorneys for Kentucky Christian College

APPENDIX II

AN APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 98-317 DATED 24th day of June, 1998.

98-01555

JOHN N. HUGHES

Attorney at Law

Professional Service Corporation
124 WEST TODD STREET
FRANKFORT, KENTUCKY 40601

Telephone:
(502) 227-7270

June 1, 1998

Telecopier:
(502) 875-7059

RECEIVED

JUN 02 1998

PUBLIC SERVICE
COMMISSION

Helen Helton
Executive Director
Public Service Commission
730 Schenkel Lane
Frankfort, KY 40601

Re: Kentucky Christian College
Tariff Filing No. T 59-287

Dear Ms. Helton:

In response to requests from the Staff, the attached letter from Jeff Wentz dated May 28, 1998 and customer list are being submitted. In the application filed on March 20th, it was asserted that if the school had to refund \$179,000 of annual revenue from the resale of telephone service that had been provided prior to PSC authorization, it would create a severe financial hardship on the school.

The attached customer list reflects only \$3744.00 in annual revenue. This revenue and that stated in the application differ because the amount in the application includes on-campus "shared tenant service" provided to students. At the time of the application, it was unclear whether the Commission would consider the on-campus sales as a violation of KRS 278.160. I understand that the on-campus revenues are to be treated as unregulated "STS" sales and, thus, not subject to refund. Therefore, the revised customer and revenue list is provided to assist the Commission in determining the appropriate remedy for the prior untariffed sales.

Also attached is a copy of a letter sent to GTE on February 12, 1998 informing the Company of the school's intent to file the application with the Commission and explaining what services it intends to provide. To date, the school has been unable to reach an agreement with GTE on this limited service offering.

Finally, the proposed letter from the school to its customers informing them of the availability of a refund will be revised to include a reference to the lack of a tariff being approved by the Commission as the reason for the refund.

If you have any questions about this or if additional information is needed, please let me know.

Very truly yours,

Jack
John N. Hughes
Attorney for Kentucky
Christian College

attachments

cc: Jeff Wente



Kentucky Christian College

100 Academic Parkway • Grayson, Kentucky 41143-2205

Phone: 606-474-3000

May 28, 1998

John H. Hughes
Attorney at Law
124 W. Todd Street
Frankfort, Kentucky 40601

Dear Jack:

Enclosed is the requested list of current subscribers to Kentucky Christian College Telephone service. To the best of my memory, Kentucky Christian College offered services to these customers for some time in the mid 1990's. The only exception was for Davis & Davis Distributors, Inc. which began phone service on January 1, 1998. We only keep one year of records on our computer system and have no way of going back and recovering data past the one year time frame. However, these amounts are respective of the 1990 to 1998 time frame.

Should you have any other questions, please feel free to contact me at 606-474-3226.

Sincerely,


Jeffrey Wentz
Director of Campus Development

jw/mr

Enclosure

**KENTUCKY CHRISTIAN COLLEGE TELEPHONE
CUSTOMERS REFUNDABLE ACCOUNTS**

<u>BUSINESS</u>	<u>ADDRESS</u>	<u>MONTHLY AMOUNT</u>	<u>ANNUALLY AMOUNT</u>
Phillip McKenzie, Attorney at Law	P O Box 635 Grayson, KY 41143	\$30	\$360
Davis & Davis Distributors Inc.	P O 575 Grayson, KY 41143	30	360
Grayson Insurance	240 East Main St. Grayson, KY 41143	30	360
Ralph's Supermarket	501 Carol Malone Blvd Grayson, KY 41143	60	720
Dr. Roger Fannin	P O Box 485 Grayson, KY 41143	30	360
<u>RESIDENCE</u>			
Bill Bondurant	KCC Box 721 Grayson, KY 41143	15	180
Billie Thornsberry	408 N Hord Street #3 Grayson, KY 41143	15	180
<u>CHRISTIAN MISSION</u>			
Mid-India Christian Mission	KCC Box 698 c/o Rob Ford Grayson, KY 41143	42	504
Hippo Valley - Mashoko Christian Mission	132 West Main Grayson, KY 41143	60	720
MONTHLY TOTAL:		\$312	
ANNUALLY TOTAL:			\$3,744